

**WHARTON, J.**

This 14<sup>th</sup> day of March, 2016, having considered the brief under Supreme Court Rule 26(c) and motion to withdraw filed by appellant's counsel, the points the appellant wishes the Court to consider and the State's response, it appears to the Court that:

1. On October 6, 2015, William B. Hoyle was convicted in a bench trial in the Court of Common Pleas of the charge of driving under the influence of alcohol ("DUI"). He was sentenced to pay the costs of prosecution and all statutory surcharges, pay a fine of \$500.00, plus \$250.00 to the Transportation Fund, be imprisoned for one year, suspended for one year at Level I probation, lose his license for one year and complete a DUI course of instruction. Hoyle filed his notice of appeal to this court on October 21, 2015.

2. On appeal, Hoyle's appellate counsel has filed a no-merit brief, including the points Hoyle wishes this Court to consider, and a motion to withdraw under Supreme Court Rule 26(c).<sup>1</sup> The State has responded to the Rule 26(c) brief, and has requested that the Court affirm the judgment below without further proceedings.

3. When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), this Court must be satisfied that the appellant's counsel has made

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<sup>1</sup> Made applicable by Supr. Ct. Crim. R. 39(c); *See* Del. Supr. Ct. R. 26(c) (governing appeals without merit).

a conscientious examination of the law for arguable claims.<sup>2</sup> Also, this Court must conduct its own review of the record and determine “whether the appeal is so frivolous that it may be decided without an adversary presentation.”<sup>3</sup>

4. In fulfilling its duty to review the record, the Court has considered the points Hoyle wishes the Court to consider. Generally, Hoyle attacks the credibility of the arresting officer and questions the reliability of the Intoxilyzer results. The trier of fact, here the trial judge, is the sole and exclusive judge of the witnesses’ credibility. To the extent there were credibility issues, the trial court was free to believe the testimony of the state’s witness and reject Hoyle’s testimony, both as to the facts of the incident and as to the functioning of the Intoxilyzer machine. The points Hoyle wants the Court to consider do not provide a basis for reversing his conviction.

5. In this case, having conducted “a full examination of all the proceedings” and having found “no nonfrivolous issue for appeal,”<sup>4</sup> the Court concludes that Hoyle’s appeal “is wholly without merit.”<sup>5</sup> The Court is satisfied that Counsel made a conscientious effort to examine the record and the law and properly determined that Hoyle could not raise a meritorious claim on appeal.

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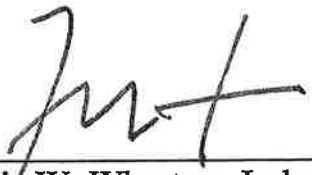
<sup>2</sup> *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

<sup>3</sup> *Penson v. Ohio*, 488 U.S. at 81.

<sup>4</sup> *Id.* at 80.

<sup>5</sup> *Supra* note 1.

**NOW, THEREFORE, IT IS ORDERED** that the judgment of the Court of  
Common Pleas is **AFFIRMED**. The motion to withdraw is moot.



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Ferris W. Wharton, Judge